AMENDMENTS TO THE DRAWINGS:

A replacement drawing sheet is submitted for Figure 1. The spelling of "seitch" has been amended to "switch" for each element 4.

REMARKS

The application has been amended to place the application in condition for allowance at the time of the next Official Action.

The specification is amended to make editorial changes therein.

Figure 1 has been amended to correct the spelling of "seitch" to "switch" for each element 4.

Claims 1-23 are pending in the application.

Claims 17-20 and 23 are rejected under 35 USC §101 as being directed to non-statutory subject matter. This rejection is respectfully traversed.

MPEP §2106(III)(B)(2)(b)(i) and (ii) provide that for a 35 USC 101 analysis, a process is statutory if it results in a physical transformation outside the computer, i.e., falls into one or both of the following safe harbor categories (i or ii).

Safe harbor (i) provides that a process claim is statutory if the claim includes one or more post-computer process steps that result in a physical transformation outside the computer.

In claim 17, the last recited step is charging the portable telephone a calculated toll. The toll is calculated by the computer and then the portable telephone is charged the calculated toll. Such charging the telephone a toll step is outside the computer processing step and is thus statutory.

Claims 18, 19 and 20 also include the step of charging a portable telephone a calculated toll. The analysis above regarding claim 17 is equally applicable to claims 18, 19 and 20.

Claim 23 is amended to include the step of charging the portable telephone a calculated toll. The analysis above regarding claim 17 is equally applicable to claim 23.

Since each of claims 17-20 and 23 includes a post-computer processing step that results in a physical transformation outside the computer, the claims are believed statutory. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1-20 and 22-23 are rejected as unpatentable over TREYZ et al. 6,711,474 in view of HASSETT 6,653,946. This rejection is respectfully traversed.

The position set forth in the Official Action is that the TREYZ reference teaches all that is recited except for a toll calculation unit for calculating a toll on the basis of a unit toll and an identified driving route.

The HASSETT reference is offered for this teaching and the conclusion set forth in the Official Action is that it would have been obvious to combine the references to show that the toll calculated is based on the route the vehicle has traveled.

However, neither the characterization of the references nor the motivation for combining the references is viable.

First, TREYZ does not teach that for which it is offered with respect to the recited server, the recited driving route identification unit and the recited toll charging unit.

Claim 1 recites that a server comprises a first memory for storing locations of base stations and a second memory for storing names of contractors or their car numbers and unit toll for each section along a highway.

The Official Action offers column 44, lines 15-22 of TREYZ as teaching a first memory. However, this memory or storage 80 determines the geographical position of the automobile 12 (containing automobile personal computer 14) and determines the corresponding street address or other contextual location information corresponding to the position of the vehicle using a local map database or the like that is stored in memory 80. TREYZ does not teach or suggest that a memory stores locations of the base stations.

Column 78, lines 8-10 and lines 27-30 and column 55, lines 3-9 of TREYZ are offered for the teaching of a second memory.

Column 78, lines 8-10 of TREYZ discloses a digital camera such as a digital camera 170 to capture images of license plates. Column 78, lines 27-30 discloses that if desired, a video camera may be used. Digital images may be captured from the video camera by automobile personal computer 14 (e.g.,

digital images may be captured in memory in automobile personal computer 14).

Accordingly, it appears that the Official Action is equating the memory that captures the digital images as the second memory. However, such images that are captured are the images of tailgating vehicles captured by the digital camera mounted on the rear window of the automobile 12. See column 78, lines 13-22. Such tailgating cars are not contractors of the electronic toll payment service or the car numbers of such contractors as recited.

As to the unit toll, column 55, lines 3-9 of TREYZ teaches that each toll collection facility may use a different frequency and different communications protocol for its local wireless link. TREYZ uses his automobile personal computer 14 to identify which protocol is being used. However, such identifying information is only based on the protocol for communication transmission and is not based on the amount of toll or unit toll for each of the toll collection facilities. Therefore, TREYZ does not teach or suggest a memory for storing a unit toll for each section along a highway.

As to the recited driving route identification unit, column 59, lines 7-19 of TREYZ is offered for this teaching. However, this passage teaches that automobile personal computer 14 is used to select a route wherein the starting point and the destination of travel are inputted. TREYZ does not teach a

driving route identification unit for identifying the driving route of the portable telephone on the basis of the locations of the base stations which are connected with the portable telephone as recited.

As to the toll charging unit, column 46, lines 35-41 of TREYZ is offered for this teaching. However, this passage is directed to financial transactions using the automobile personal computer 14 and does not teach or suggest charging a portable telephone a calculated toll.

In TREYZ, automobile personal computer 14 is the primary element. Any mention of a portable telephone (for example, column 45, lines 50-54) is with respect to a telephone that is attached to or part of the automobile personal computer 14. TREYZ does not teach or suggest that it is the portable telephone itself to which a calculated toll is charged.

Second, it does not appear that there is sufficient motivation to combine TREYZ with HASSETT.

The Official Action states that HASSETT is analogous art for the purpose of showing that a toll calculated is based on the route a vehicle has traveled.

However, the device 16 of HASSETT is a special in-vehicle component that is specific to toll collecting that is purchased or leased from a toll authority.

Applicant at page 1, lines 11-14 of the specification as filed notes that toll payments using wireless communication

devices are known. What is not known is a toll payment system based on a portable telephone.

The Federal Circuit has held that in determining the differences between the prior art and the claims, the question under 35 USC §103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip, Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

In the present application, a toll calculation unit calculates a toll on the basis of an identified driving route that a portable telephone has driven. The driving route is established based on the locations of base stations which are connected with the portable telephone.

In HASSETT, a toll is based on toll entry and exit points as established by toll transmitting stations that are set up at each toll exit. In HASSETT, the toll is based on the entry and exit toll data, as calculated by a specific toll monitoring device. HASSETT neither teaches that the calculated toll is charged to a portable telephone nor that a toll calculation unit calculates a toll on the basis of a unit toll and the identified driving route.

Accordingly, when the claims are properly analyzed under 35 USC §103 based on invention as a whole, it would not have been obvious to use the teachings of a specific toll device

as taught by HASSETT in the device of TREYZ to render obvious a toll payment system based on a portable telephone as recited.

Claim 2 also recites a toll payment system which comprises a portable telephone and a memory for storing names of contractors and car numbers and a unit toll for each section along a highway. Claim 2 further recites a driving route identification unit for identifying a driving route of the portable telephone on the basis of locations measured by a GPS unit and a toll charging unit for charging the portable telephone a calculated toll. The analysis above regarding claim 1 is equally applicable to claim 2.

Claims 3-16 depend from one of claims 1 and 2 and further define the invention and are also believed patentable over the cited prior art.

Independent claim 17 recites storing, in a memory of a server, names of contractors or their car numbers and unit toll for each section along a highway. Independent claim 17 also recites identifying a driving route of a portable telephone and charging the portable telephone a calculated toll. The analysis above regarding claim 1 is equally applicable to claims 17-20.

Independent claim 23 also recites storing, in a memory of a server, a name of a contractor of a portable telephone and a number of a car of the contractor and tolls for each section that the portable telephone travels along. Claim 23 also recites calculating a toll based on the total number of tolls that the

portable telephone has passed and charging the portable telephone the calculated toll. The analysis above regarding claim 1 is also applicable to claim 23.

Claim 21 is rejected as anticipated by TREYZ et al. This rejection is respectfully traversed.

Claim 21 recites a portable telephone and a first memory for storing radio base stations and their locations. Claim 21 also recites a second memory for storing a name of a contractor of the portable telephone and a number of a car of the contractor. Claim 21 further recites a driving route identification unit for identifying a driving route of the car on the basis of the location stored in the first memory of the radio base station connected with the portable telephone.

As set forth above with respect to claim 1, TREYZ teaches an automobile personal computer that may use a telephone for wireless connection but does not use a portable telephone as a basis for the transportation management system.

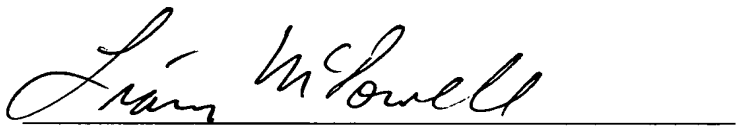
In addition, as set forth above, TREYZ fails to disclose or suggest a first memory for storing radio base stations and their locations and a second memory for storing a name of a contractor of a portable telephone and a number of a car of the contractor. TREYZ also fails to disclose a driving route identification unit for identifying a driving route of a car on the basis of the location stored in the first memory of the radio base station connected with the portable telephone.

As the reference does not disclose that which is recited, the anticipation rejection is not viable. Reconsideration and withdrawal of the rejection are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



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APPENDIX:

The Appendix includes the following item:

- replacement sheet for Figure 1